

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

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UNITED STATES OF AMERICA

v.

Docket No. 5:18-CR-54-FL-1

DEVONTA OZELL SMITH

New Bern, North Carolina  
August 8, 2019

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**TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE LOUISE W. FLANAGAN, DISTRICT JUDGE,  
UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA**

APPEARANCES:

For the Government: Kelly Leann Sandling, Esq.  
Assistant United States Attorney  
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Raleigh, NC 27601

For the Defendant: F. Hill Allen, Esq.  
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Contract Reporter: Harold M. Hagopian, RDR, CRR  
United States District Court  
Eastern District of North Carolina

Proceedings recorded by mechanical stenography  
Transcript produced by computer-assisted transcription

## OPEN PROCEEDINGS

**PROCEEDINGS**

(The following proceedings were held in open session at the United States Courthouse, 413 Middle Street, New Bern, North Carolina, before the Honorable Louise W. Flanagan, United States District Judge for the Eastern District of North Carolina, on August 27, 2019.)

(Assistant United States Attorney Kelly Leann Sandling, Esq., is present for the government. Attorney F. Hill Allen, Esq., is present with the defendant.)

10 \* \* \*

11 THE COURT: We'll take up Devonta Smith.

12 (The defendant entered the courtroom.)

13 Hello, Mr. Smith. Again, my name is Judge Flanagan and  
14 this is the time the Court's set aside to sentence you for  
15 distribution of a quantity of heroin and possessing a firearm  
16 in furtherance of a drug-trafficking crime.

17 Have you read the presentence report?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Have you had enough time to be ready  
20 today with your attorney?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Good. I'm familiar with your criminal  
23 history. It includes second-degree kidnapping, conspiracy to  
24 commit robbery with a dangerous weapon, as well as possession  
25 of a firearm by a convicted felon, and possession with the

## OPEN PROCEEDINGS

1 intent to manufacture, sell or deliver marijuana.

2                   The career offender application has been applied, to  
3 which you object, moving you from a criminal history category  
4 of III to a criminal history category of VI. It has a  
5 profound impact on the sentence.

6                   Your family background is given to me, your health,  
7 education, substance-abuse history and your employment  
8 history.

9                   The base offense level is a 12, the adjusted offense  
10 level is a 12, and then it leaps to 32 by virtue of that  
11 enhancement. Three points are taken off for acceptance of  
12 responsibility. It drops to a 29. And I receive advice that  
13 you should be sentenced to between 262 to 327 months.

14                  You face up to 20 years in prison on Count 2 and five  
15 years to life, consecutive, on Count 3.

16                  Your behavior can be supervised up to five years.

17                  That's five years on count 3. On Count 2 it's three years.  
18 The fine is a million dollars on Count 2 and a quarter-  
19 of-a-million dollars on Count 3. The guidelines suggest I  
20 start considering a fine amount at the level of \$30,000.

21                  Because there are two felony offenses, there's a total  
22 \$200 special assessment.

23                  I have read -- again, I've reread the letters that  
24 you've sent me, Mr. Smith, and I've read the sentencing  
25 memorandum that counsel's filed. And, of course, I've

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1 pondered further your objection.

2 So, under the sentencing guidelines, the defendant  
3 meets the definition of a career offender if he was at least  
4 18 years old at the time he committed the instant offense.  
5 And you were. And the instant offense is a felony that is  
6 either a crime of violence or a controlled substance offense.  
7 And it is. And you have at least two prior felony convictions  
8 of either a crime of violence or a controlled-substance  
9 offense.

10 And I understand that your objection is specifically  
11 that possession with the intent to manufacture, sell or  
12 deliver marijuana, because it didn't result in a term of  
13 imprisonment for more than one year, can't serve as a  
14 predicate offense.

15 MR. ALLEN: That is it, in essence, your Honor.  
16 That it was under the applicable structured sentencing. In  
17 state court the judge was incapable of sentencing Mr. Smith to  
18 anything other than community or intermediate punishment.

19 THE COURT: He was sentenced to six to seventeen  
20 months, suspended?

21 MR. ALLEN: Correct, your Honor.

22 THE COURT: What says the government?

23 MS. SANDLING: Your Honor, the government would  
24 reply that this was a sentence more than 12 months. And,  
25 obviously, if the defendant's probation in state court had

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1 been revoked, he would have been subject to a sentence of more  
2 than one year in this case.

3 THE COURT: I think, if you're going to find any  
4 relief from this case, you're going to find it under the 3553  
5 factors. I think the guidelines are pretty cut and dry in  
6 this regard, and it's well-established that it is a predicate  
7 offense under the circumstances presented. So, I've got to  
8 overrule you there.

9 Now, what I would like to do is talk really about  
10 something that might merit the sealing of the courtroom. Any  
11 issue here with talking about defendant's helpfulness or lack  
12 thereof?

13 MR. ALLEN: Not from the defendant, your Honor,  
14 although the sealing would, I think, be advisable.

15 THE COURT: Okay. So, what you're saying is you  
16 want to seal the record or you want to seal the courtroom?

17 MR. ALLEN: To the extent we're going to have a  
18 discussion about that, I would request that the courtroom  
19 be -- or that we be able to approach and talk.

20 THE COURT: I think your client needs to hear  
21 what's being said.

22 So, if those not affiliated with this case wouldn't  
23 mind leaving for a few minutes.

24 MR. ALLEN: Thank you, your Honor.

25 (Spectators withdrew from the courtroom during sealed

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1 proceedings.)

2 \* \* \*

3 (Transcript of sealed proceedings appear under separate  
4 cover.)

5 \* \* \*

6 (Whereupon, following sealed proceedings, all  
7 proceedings in this case were concluded.)

8 \* \* \*

9 **CERTIFICATION**

10 I certify that the foregoing is a correct transcript of  
11 the record of proceedings in the above-entitled matter to the  
12 best of my skill and ability.

13

14 /s/ Harold M. Hagopian  
15 Court Reporter

16 October 28, 2019  
17 Date

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